1935

Pros. / Serial Nos. 1 – 2

(k)

Subject.

Procedure in issuing notices to the Public Prosecutor in Criminal Cases.

Previous References.

55/1886.

Later References.

NOTES AND PRECIS.

(1)

Under section 422 of the Code of Criminal Procedure, notice of appeal should be served on such officer as the local Government may appoint in this behalf. In cases of appeals filed in the local Sessions Court and the Resident's Court, the Public Prosecutor is the officer entitled to notice (vide rule 2 of Resident's Proceedings No.1116 dated the 7th Februaby 1923).

Corp. Ed
R.O. F. 55/1926 (P)
(2)

The practice of the Resident's Court is to issue notice in appeals filed by appellants in person or by their advocates to the Public Prosecutor giving sufficient time. The appeals received from jail are posted for admission first. If the Court, after perusing the memorandum of appeal considers that there is no sufficient ground for interfering, dismisses the appeal summarily under section 421 Cr.P.C. and if it considers that there is sufficient ground for interfering, orders notice orally to the Public Prosecutor immediately, if he is present in Court or for the next dav. In these cases it is obviously not possible for the Court even to issue notice in writing sufficiently in advance. In rule 2 abovementioned the Public Prosecutor is to appear in the Resident's Court in appeals against convictions by the Sessions Judge. The District Magistrate has no option to withhold his appaarance before the Resident's Court.

(3)

In appeals filed in the Sessions Court against convictions by the First Class Magistrates, the Public Prosecutor can appear with the leave of the District Magistrate. Here the District Magistrate can use his discretion whether the Public Prosecutor has to put in an appearance or not.

(4)

If notice of appeal is to be given to the District Magistrate, as suggested, it will be difficult for the Resident's Court as it sits for two days in a month. The Sessions Court when issuing notice to the Public Prosecutor could give sufficient time for the Public Prosecutor to take permission from the District Magistrate. Without modifying rule 2, it may be suggested that notices, except in cases where the Court calls upon the Public Prosecutor to appear, could be issued to the Public Prosecutor through the District Magistrate, and the District Magistrate could then consider whether the appeals should be opposed in the interests of justice, and issue necessary instructions to the Public Prosecutor.

The file may be sent to the District Magistrate for favour of remarks.

23.8.39.

24/8/39.

ASRao
23.8.39

Secretary.

560
24 AUG 1939
3005/C/39
No.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
28 AUG 1939
8948
Diary No.
File No.

District Magistrate, C. & M. Station, Bangalore.

u/o. No. D.8346-39/Judl., dated 24th Aug. 1939.

I agree to the proposal in para 4 above.

H.H. Garbutt
25.8.39.

Secretary to the Resident in Mysore, Bangalore.

U.O. No. 3005-C-39 dated 25th August 1939.

28/8/39

Mr. Chetty

Dy.No.8948

(1)

Please see from para 4 ante.

Draft submitted for approval.

30.8.39.

1/9/39. (para 6)

31.8.39

Secretary

S. N.(2) Issue.

Record.

CORRESPONDENCE.

No.3006-C-39.

Office of the District Magistrate,
Civil and Military Station, Bangalore.

Dated 9th August 1939.

OFFICE OF THE
HON'BLE THE RESIDENT
IN MYSORE, BANGALORE.
11 AUG. 1939
Diary No. 8346
File No.

FROM H.H. Carleston, Esq., I.C.S.,

DISTRICT MAGISTRATE, CIVIL AND MILITARY STATION,

BANGALORE.

To The Secretary to the Hon'ble the Resident in Mysore,

Bangalore.

SIR,

Criminal appeals - notices to the Public Prosecutor direct - change of procedure - requests.

Please refer to Rule 2 of the Hon'ble the Resident's Proceedings No.1116, dated the 7th February 1923. At present the Public Prosecutor receives notices of appeals from the Court of the Hon'ble the Resident and the Sessions Court and subsequently sends the notice on to me and asks for instructions as to whether he should or should not appear and oppose the appeals. Sometimes the notices reach me late- on occasions even after the date fixed for hearing of the appeals. In any case it would be simpler if in future the notices of appeal/under Section 422 Cr.P.C. were sent direct to me so that I can consider whether the appeals should be opposed in the interest of justice and issue necessary instructions to the Public Prosecutor. It will also facilitate matters if it is so noted in the notice if an appeal is a jail appeal.

I have the honour to be,
Sir,
Your most obedient servant,

H.H. Carleston

DISTRICT MAGISTRATE.

DESPATCHED
10 AUG. 1939

MAB.9/8.

Judl 579/39 Rs.

R.Dis.F.No.526/39 5th September 1939
Judl.

From

The Secretary to the Resident

To

The Sessions Judge, C & M Stn.,
Bangalore

The Registrar, Court of the
Hon'ble the Resident in
Mysore.

Sir,

I am directed to invite your attention to rule 2 of Proceedings* of the Hon'ble the Resident in Mysore (Judl) No.1116, dated the 7th February 1923. Except in cases where the Court calls upon the Public Prosecutor to appear immediately, notices in future should be issued to him through the District Magistrate, C & M Station Bangalore.

* Cor p.80
Rec. F No. 515/1926 (P)

I have etc.,

Secretary to the Resident.

Copy to the District Magistrate C & M Station, Bangalore, for information.

30.8.39.

31.8.39

1045/2/5/35.